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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,918	07/05/2005	Todd Stout	67101-002	2982

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EXAMINER
SORIANO, BOBBY GILES

ART UNIT	PAPER NUMBER
3769	

MAIL DATE	DELIVERY MODE
10/25/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
	10/524,918	STOUT, TODD
Office Action Summary	Examiner	Art Unit	
	Bobby Soriano	3769	
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --			

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>01 October 2010</u>.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>18,48-60 and 64-69</u> is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>18,48-60 and 64-69</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a) ☐ All   b) ☐ Some * c) ☐ None of:

        1. ☐ Certified copies of the priority documents have been received.

        2. ☐ Certified copies of the priority documents have been received in Application No. _____.

        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

The Examiner notes that the application has been transferred from the previous

Examiner, Michael Astorino. Accordingly the Applicant is invited to request an interview to

discuss any concerns or issues not currently on record.

Applicant's arguments filed October 1, 2010 with respect to the rejection of independent

claim 18 and claims dependent therefrom under 35 U.S.C. 102(e) have been fully considered and

are persuasive. Specifically the Applicant argues that the applied prior art Epler et al. does not

disclose the limitation "updating the trigger at an update frequency, wherein the step of updating

includes adding new occurrences to the historical occurrences and dropping old occurrences

from the historical occurrences, wherein the step of updating the trigger is performed by the main

computer" as recited in independent claim 18. Therefore the rejection has been withdrawn.

However, upon further consideration, a new grounds of rejection is made in view of Schradi et

al. U.S. Patent 5,860,918.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

Claims 18, 48-60, and 64-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Epler et al. US Patent Number 7,024,370 (hereinafter "Epler") in view of Schradi et al. US Patent Number 5,860,918 (hereinafter "Schradi").

Epler discloses the following of claim 18:

a method of activating an alert upon an occurrence of one of a plurality of events and generating and updating a trigger, the method comprising the steps of:

generating a trigger based upon historical occurrences of at least one health symptom experienced by a plurality of patients, wherein the step of generating is performed by a main computer (Epler column 9 line 54 to column 12 line 63 describing the process illustrated in Figs. 5-6 of generating algorithms to issue alerts based on health related events);

monitoring occurrences of the at least one health symptom within a time window (column 9 lines 8-21 indicating monitoring of occurrences based on frequency of occurrences within a time period);

comparing the occurrences of the at least one health symptom within the time window to the trigger, wherein the step of comparing the occurrences is performed by the main computer (column 10 line 27 to column 13 line 6 wherein algorithms are generated to compare occurrences of health-related events to a trigger possibly indicating an epidemic event); and

activating an alert indicating the occurrence of an event when the occurrences of the at least one health symptom exceed the trigger (column 12 line 64 to column 14 line 16 discloses the use of the alert to confirm suspicion of infection agents or other possible bio-threats).

Epler discloses updating the trigger at an update frequency, wherein the step of updating includes adding new occurrences (incoming data) to the historical occurrences as cited in Epler

column 9 lines 8-31. However Epler is silent on updating the trigger by dropping old

occurrences from the historical occurrences. However Schradi, a reference in an analogous art,

discloses a patient monitoring device for updating alert triggers according to a set window of

time (i.e. 24 hours). As time moves forward and new data is received, old data prior to the

observed 24 hours is removed from the observation period used to trigger an alert (Schradi Fig. 2

column 3 line 57 to column 4 line 62). Schradi teaches that dropping off or deletion of older

historical data is necessary for systems with limited amounts of data storage (Schradi column 9

lines 21-33). Therefore it would have been obvious to one of ordinary skill in the art to remove

old occurrences of historic data because Schradi teaches that the removal of old occurrences of

data in view of new incoming data is a requirement for monitoring patient trends in order to

efficiently use system resources, in particular memory storage (Schradi column 7 lines 33-43 and

column 8 lines 38-63).

Dependent claims 48-60 and 64-69 as amended are now dependent on independent claim

18. However because the dependent claims were previously addressed by the applied prior art

Epler and without there being any arguments directed towards the merits of the rejection, the

claims are rejected for substantially the same cited sections of Epler as provided in the previous

office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Bobby Soriano whose telephone number is (571)270-7030. The

examiner can normally be reached on Monday thru Friday, 10:30am to 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson III can be reached on 571-272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bobby Soriano/
Examiner, Art Unit 3769

/Henry M. Johnson, III/
Supervisory Patent Examiner, Art Unit 3769

October 22, 2010